

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JANE SULLIVAN and P. POES 1-75,
individually and on behalf of others similarly
situated.

No.

Plaintiffs,

COMPLAINT

CLASS ACTION

THE UNIVERSITY OF WASHINGTON, a Washington public corporation; ELIZA SAUNDERS, Director of Public Records and Open Public Meetings at the University of Washington, in their official capacity,

Defendants.

Plaintiffs Jane Sullivan and P. Poes 1-75 bring this Complaint on behalf of themselves and all those similarly situated, against Defendant the University of Washington, and against Defendant Eliza Saunders (“Saunders”) in their official capacity as Director of Public Records and Open Public Meetings at the University of Washington. Under Fed. R. Civ. P. 65, Plaintiffs seek a Temporary Restraining Order and Preliminary Injunction restraining the University and Saunders from disclosing certain unredacted records that would reveal Plaintiffs’ identities as the members, alternate members, and former members of the Institutional Animal Care and Use Committee of the University of Washington (“IACUC” or “the Committee”).

COMPLAINT - 1
SULLIVAN ET AL. v. UNIVERSITY OF WASHINGTON ET AL.
NO.

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The IACUC reviews and monitors the use of animals in medical research at the University. It currently operates anonymously due to threats of harassment of Committee members by members of the public who oppose the use of animals in medical research. But an individual affiliated with an organization opposing animal research has filed a request with the University of Washington, under Washington's Public Records Act, seeking the disclosure of the Appointment Letters appointing Plaintiffs to the Committee. Disclosure of the Appointment Letters would reveal Plaintiffs' identities and end their anonymous service on the IACUC.

Under the Constitution of the United States and the Washington Constitution, Plaintiffs' constitutional rights to free association and expression without harassment or threats, as expressed through their affiliation with and service on the Committee, exempt Plaintiffs' personally identifying information from disclosure under the Public Records Act, and/or outweigh the interests of this requester in revealing Plaintiffs' identities. Plaintiffs seek, on their own behalf and on behalf of those similarly situated, an order of this Court enjoining the release of the Appointment Letters without the redaction of IACUC members' names and any other personally identifying information. Plaintiffs further seek to enjoin the unredacted release of any related documents or communications that would reveal members' names and other personally identifying information.

Plaintiffs allege as follows:

I. PARTIES

Proposed Class Representatives

1. Plaintiff Jane Sullivan is Chair of the University of Washington's Institutional Animal Care and Use Committee. She has served in that capacity since 2015.

2. The remaining Plaintiffs seek to proceed pseudonymously as "P. Poe X" due to the confidentiality of their identities being among the essential information at issue in this action.

3. Plaintiff P. Poe 1 is a current member of the University of Washington's JACUC.

4. P. Poes 2-75 are a proposed class of individuals who are members, alternate members, or former members of the UW JACUC and may be added as plaintiffs because their

1 personally identifying information is reflected in the records at issue or in related documents or
2 communications.

3 5. Plaintiffs seek to proceed in a class action filed by Jane Sullivan and P. Poe 1 on
4 behalf of all persons similarly situated (“P. Poes 2-75”).

5 **Defendants**

6 6. Defendant University of Washington is a Washington public corporation.

7 7. Defendant Eliza Saunders is an official of the University of Washington, serving as
8 Director of Public Records and Open Public Meetings at the University of Washington. Defendant
9 Saunders is sued in their official capacity, as a “person” as defined in Title 42, United States Code,
10 Section 1983.

11 **II. JURISDICTION AND VENUE**

12 8. This case arises under: the United States Constitution; the Constitution of the State
13 of Washington; Title 42, United States Code, Section 1983; Title 42, United States Code, Section
14 289d (the Health Research Extension Act of 1985, Pub. L. No. 99-158); and Title 7, United States
15 Code, Section 2143 (the Food Security Act of 1985, Pub. L. No. 99-198).

16 9. This Court has jurisdiction over this action under Title 28, United States Code,
17 Sections 1331 and 1343.

18 10. This Court has pendent or supplemental jurisdiction over claims arising under the
19 laws of the State of Washington under Title 28, United States Code, Section 1367(a).

20 11. Venue in this Court is proper under Title 28, United States Code, Section
21 1391(b)(2), because, on information and belief, the records at issue are maintained by the
22 University of Washington in Seattle, Washington, and because Defendant Saunders exercises their
23 official duties in Seattle, Washington, and made the decision in Seattle to produce relevant records.

24 **III. FACTS**

25 12. The Institutional Animal Care and Use Committee at the University of Washington
26 is a committee associated with the University and established pursuant to federal law (Title 42,

1 United States Code, Section 289d (the Health Research Extension Act of 1985, Pub. L. No. 99-
 2 158); and Title 7, United States Code, Section 2143 (the Food Security Act of 1985, Pub. L. No.
 3 99-198).

4 13. In the United States, every institution that accepts government funding for research
 5 involving the use of animals is required by federal law to have an IACUC to review, approve, and
 6 monitor all current or proposed research projects involving vertebrates or cephalopods (e.g.
 7 octopi). IACUCs are responsible for ensuring that animals receive the care, treatment, and respect
 8 that they deserve, as critical components of biomedical research to find cures for diseases and
 9 conditions that afflict both humans and animals.

10 14. An IACUC must comply with federal laws, guidelines, and policies. It is subject to
 11 inspection by the U.S. Department of Health and Human Services, and the U.S. Department of
 12 Agriculture.

13 15. The IACUC at the University of Washington has a website describing its
 14 organization and its activities, available at << <https://oaw.uw.edu/iacuc/> >>.

15 16. The UW IACUC website states: “The IACUC ensures compliance with federal
 16 regulations, reviews and approves each proposed animal project before it can begin, inspects
 17 animal facilities, and performs a comprehensive review of the University’s animal program twice
 18 a year.”

19 17. The UW IACUC website further states: “IACUC members are appointed by the
 20 Institutional Official (IO), who is granted that authority by the President of the University. The IO
 21 is responsible for the proper functioning of the University’s animal care and use program, including
 22 compliance with all laws and regulations. The IO at the University of Washington is the Sr.
 23 Associate Vice Provost for Research Administration and Integrity.”

24 18. The website further describes that “The committee includes at least one scientist
 25 with expertise in experiment design, at least one veterinarian experienced in care of research
 26

1 animals, at least one non-scientist, and at least one unaffiliated member — someone not employed
 2 by UW and whose immediate family members are not UW employees.”

3 19. The IACUC must evaluate and prepare reports on all of the institution’s programs
 4 and facilities (including satellite facilities) for activities involving animals at least twice each year.
 5 The reports are addressed to the Institutional Official.

6 20. As the website states, the IACUC has monthly meetings that are open to the public
 7 and include a public comment period. The website also makes available both the minutes of the
 8 monthly IACUC meetings and the committee’s semi-annual reports to the Institutional Official.

9 21. Although the IACUC meetings are open to the public, the IACUC at the University
 10 of Washington has for some time operated with a limited amount of anonymity for its members
 11 and alternates, specifically due to ongoing threats and harassment of committee members by
 12 members of the public who oppose the use of animals in research.

13 22. The public still can view and comment at IACUC meetings. Members of the public
 14 are still making harassing and threatening comments to Committee members. For example, at the
 15 most recent monthly meeting of the IACUC on Thursday, February 17, 2022, a member of the
 16 public asserted the members of the committee were like “Nazis,” and the UW was like
 17 “Auschwitz,” for supporting animal research. Similar hostile comments have been made at a
 18 variety of meetings in the past.

19 23. IACUC members and alternates are also personally aware of a variety of harassing
 20 and threatening communications directed at them and their colleagues as a result of their
 21 association with the IACUC and/or with animal research. This has included, but is not limited to,
 22 picketing outside the private residence of an individual involved in animal research at UW,
 23 including by individuals who identified themselves as supporters of the group People for the
 24 Ethical Treatment of Animals (“PETA”).

25 24. IACUC members and alternates reasonably believe that attempts to personally
 26 identify committee members, despite the otherwise public conduct of IACUC meetings and reports,

1 are being made in order to allow members of the public who oppose the use of animals in medical
 2 research to harass and intimidate IACUC members and alternates. IACUC members and alternates
 3 reasonably believe that they would be harmed if their identities were made public by being
 4 subjected to increased harassment and threats.

5 25. For these reasons, the federal agencies that regulate IACUC committees have
 6 allowed the University of Washington's committee to continue to keep confidential the names of
 7 serving committee members and alternates, other than Plaintiff Jane Sullivan (the Chair), and the
 8 lead veterinarian.

9 26. People for the Ethical Treatment of Animals ("PETA") is an international
 10 organization that opposes what it terms "unethical" treatment of animals, including the use of
 11 animals in medical research. PETA's website asserts that "Animals are not ours to experiment on,
 12 eat, wear, use for entertainment, or abuse in any other way."

13 << <https://www.peta.org/features/what-peta-really-stands-for/>>> (reviewed February 19, 2022).

14 27. Regarding the use of animals in medical research, PETA states that "PETA is at the
 15 forefront of stopping this abuse. Our dedicated team of scientists and other staff members work
 16 full time exposing the cruelty of animal tests in order to ensure their imminent end. This team...
 17 spearheads hard-hitting eyewitness exposés and public campaigns that have been pivotal in shifting
 18 public opinion against animal testing, and persuades major corporations, government agencies, and
 19 universities to abandon animal tests in favor of modern, non-animal methods."

20 <<<https://www.peta.org/issues/animals-used-for-experimentation/>>> (reviewed February 19,
 21 2022).

22 28. PETA's website announces that PETA deliberately encourages its followers to send
 23 an overwhelming number of communications demanding closure of animal research institutions
 24 and programs. For example, PETA is currently opposing a primate research center associated with
 25 the University of Washington known as the Washington National Primate Research Center
 26 ("WaNPRC"). PETA itself declares on its website that "PETA supporters have sent more than

1 57,000 e-mails calling for the immediate closure of the WaNPRC and the release of the monkeys
 2 there to reputable sanctuaries.” Available at <<<https://www.peta.org/blog/peta-sues-uw-monkey-experiments/>>> (reviewed February 19, 2022).
 3

4 29. On or about June 24, 2021, a public records request was filed with the University
 5 of Washington by Dr. Lisa Jones-Engel. Dr. Jones-Engel identified herself as “Senior Science
 6 Advisor, Primate Experimentation, Laboratory Investigations Department, People for the Ethical
 7 Treatment of Animals,” with a “peta.org” email address.
 8

9 30. Dr. Jones-Engel’s public records request stated it was “made on behalf of People
 10 for the Ethical Treatment of Animal[s] (PETA), pursuant to Washington’s Public Records Act,
 11 Wash. Rev. Code Secs. 42.56.001 to 42.56.904.” The request was addressed to “Eliza A. Saunders,
 12 Director, Public Records and Open Meetings, University of Washington.”
 13

14 31. The request asked “For the period from Jan 1, 2014, to the present, I am requesting
 15 copies of all of the Institutional Animal Care and Use Committee appointment letters that
 16 institutional officials have created or produced.”
 17

18 32. Because “appointment letters” to the IACUC are addressed to individual Committee
 19 members and alternates, they contain personally identifying information, including revealing the
 20 identities, email and/or physical addresses, and/or work affiliations of Committee members.
 21

22 33. Dr. Jones-Engel is a former member of the IACUC at the University of Washington
 23 and is very likely aware that the appointment letters include such personally identifying
 24 information.
 25

26 34. During 2021 and 2022, the University of Washington processed this PETA records
 27 request and considered whether, in its view, the records in question were required to be disclosed
 28 under Washington’s Public Records Act.
 29

30 35. On February 9, 2022, the University of Washington notified members of the IACUC
 31 by email that in response to the Jones-Engel/PETA request, the University intends to release the
 32

1 requested records on February 25, 2022, and will do so if not notified by February 24, 2022, of a
 2 court order restricting the University from releasing the records.
 3

4 36. The University of Washington's notification email regarding the Jones-
 5 Engel/PETA records request also contains the email addresses of various IACUC members and
 6 alternates, and the unredacted disclosure of this email and any similar communications also would
 7 reveal personally identifying information of those committee members.
 8

9 37. On information and belief, Defendant Eliza Saunders, in their official capacity as
 10 Director of Public Records and Open Public Meetings at the University of Washington, is the
 11 official responsible for administering the University of Washington's response to the Public
 12 Records Act request at issue.
 13

IV. CLASS ACTION ALLEGATIONS

14 38. Under Fed. R. Civ. P. 23(b), Plaintiffs Jane Sullivan and P. Poe 1 seek to bring this
 15 action as a class action on behalf of themselves and all individuals similarly situated
 16 ("P. Poes 2-75").
 17

18 39. **Class Definition:** The proposed class consists of individuals who are current and
 19 former members and alternate members of the IACUC at the University of Washington, whose
 20 personally identifying information is reflected in one or more appointment letters, and/or in
 21 communications relating to the Jones-Engel/PETA public records request.
 22

23 40. **Numerosity:** On information and belief, there are approximately 75 members in the
 24 proposed Class, who are unable to sue individually in the short time available prior to the
 25 University's stated intent to release the records in question. This Class is sufficiently numerous
 26 that it is impracticable to join each individual member. It will substantially benefit all parties and
 the Court if the claims of the Class may be considered and adjudicated in a single action.
 27

28 41. **Commonality:** The claims of Plaintiffs and the class Plaintiffs seek to represent
 29 present common questions of law and fact. These include, but are not limited to, whether Plaintiffs'
 30 right to freedom of association under the Constitutions of Washington and the United States
 31

constitute an exemption to disclosure under RCW 42.56, and whether the Court should grant injunctive relief barring Defendants from releasing Plaintiffs' unredacted personally identifying information.

42. **Typicality:** The claims of Plaintiffs are typical of the Class, with the sole exception that Plaintiff Jane Sullivan does not serve as an anonymous member of the UW IACUC. In all other respects, Plaintiffs' claims are based on the same conduct by Defendants and share the same legal bases.

43. **Adequacy:** Plaintiffs are adequate representatives of the proposed Class, as their legal interests are in all respects aligned. Plaintiffs have retained the representation of undersigned counsel, who is experienced in class action litigation, and Plaintiffs have the resources necessary to prosecute this action.

44. **Injunctive Relief:** Because Defendants threaten to act on grounds applicable to the proposed Class as a whole, injunctive relief as to the proposed Class as a whole is appropriate, and would avoid a risk of duplicative litigation and inconsistent adjudications.

FIRST CAUSE OF ACTION

VIOLATION OF CONSTITUTIONAL FREEDOM TO ASSOCIATE

45. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs, as if fully set forth herein.

46. Plaintiffs' affiliation with each other, and with the UW IACUC, is a form of free association and expression protected under the Constitutions of Washington and the United States.

47. Plaintiffs have the right to exercise these constitutional rights free from inappropriate harassment and threats.

48. Under the present circumstances, Defendants' disclosure of Plaintiffs' personally identifying information pursuant to Washington's Public Records Act would infringe on Plaintiffs' constitutional rights.

1 49. To the extent Defendants are state officers acting in their official capacity under
2 color of state law, Plaintiffs may further obtain injunctive relief under Title 42, United States Code,
3 Section 1983, from Defendants' deprivation of Plaintiffs' constitutional rights.
4

5 **SECOND CAUSE OF ACTION**

6 **INJUNCTIVE RELIEF (RCW 42.56.540)**

7 50. Plaintiffs repeat and re-allege each and every allegation contained in the preceding
8 paragraphs, as if fully set forth herein.

9 51. Washington's Public Records Act, RCW 42.56.540, authorizes a court to enjoin the
10 release of a public record when "such examination would clearly not be in the public interest and
11 would substantially and irreparably damage any person, or would substantially and irreparably
12 damage vital governmental functions."

13 52. Washington's Public Records Act, RCW 42.56.070(1), further provides that a
14 public record may be exempt from disclosure under an "other statute" outside of the Public Records
15 Act "which exempts or prohibits disclosure of specific information or records."

16 53. Plaintiffs' constitutional rights of free association and expression free from
17 harassment constitute an "other statute" exempting Plaintiffs' personally identifying information
18 from disclosure under RCW 42.56.070(1), and therefore authorizing an injunction under RCW
19 42.56.540.

20 54. Because the disclosure of Plaintiffs' personally identifying information would
21 infringe on Plaintiffs' constitutional rights of free association and expression, Plaintiffs are entitled
22 to an injunction barring disclosure of such information under RCW 42.56.070(1) and RCW
23 42.56.540.

24 **THIRD CAUSE OF ACTION**

25 **DECLARATORY JUDGMENT**

26 55. Plaintiffs repeat and re-allege each and every allegation contained in the preceding
paragraphs, as if fully set forth herein.

1 56. Plaintiffs are entitled to a declaratory judgment against Defendants, because a
2 substantial controversy exists between Plaintiffs and Defendants, as alleged herein.
3

4 57. Plaintiffs are entitled to a declaratory judgment including but not limited to whether
5 Plaintiffs' constitutional rights of free association and expression free from harassment constitute
6 an "other statute" exempting Plaintiffs' personally identifying information from disclosure under
7 RCW 42.56.070(1), and therefore authorizing an injunction under RCW 42.56.540.
8

PRAYER FOR RELIEF

9 WHEREFORE, Plaintiffs seek judgment in their favor and relief against Defendants as
10 follows:
11

12 A. Temporary, preliminary, and permanent injunctive relief, enjoining each of
13 Defendants from disclosing personally identifying information of Plaintiffs;
14

15 B. Declaratory judgment that the release of Plaintiffs' personally identifying
16 information would violate the constitutional rights of Plaintiffs;
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18 C. Certification of a class of Plaintiffs as defined above;
19

20 D. The appointment of Plaintiffs as representatives of the certified class;
21

22 E. The appointment of undersigned counsel as counsel for the certified class;
23

24 F. Declaratory judgment that disclosure of the "P. Poe" plaintiffs' and class members'
25 personally identifying information would violate the Constitutions of the United States and
26 Washington, and for that reason is exempt from disclosure under Washington's Public Records
Act;
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28 G. Such other and further relief as the Court deems proper and just.
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30 DATED this 22nd day of February, 2022.
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2
3 Respectfully submitted,
4

5 **Goldfarb & Huck Roth Riojas, PLLC**
6

7 /s/Darwin P. Roberts
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9

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10 Counsel for Plaintiffs Jane Sullivan et al.
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COMPLAINT - 12
SULLIVAN ET AL. v. UNIVERSITY OF WASHINGTON ET AL.
NO.

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